

**Decision ALTERNATE PROPOSED DECISION OF COMMISSIONER KENNEDY**  
**(Mailed 6/24/04)****BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of  
SAN GABRIEL VALLEY WATER COMPANY  
(U337W) for Authority to Increase Rates Charged  
for Water Service in its Fontana Water Company  
Division to Increase Revenues by \$11,573,200 or  
39.1% in 2003, \$3,078,400 or 7.3% in 2004,  
\$3,078,400 or 6.8% in 2005, and \$3,079,900 or 6.4%  
in 2006.

Application 02-11-044  
(Filed November 25, 2002)

**INTERIM OPINION ESTABLISHING AN EFFECTIVE DATE  
OF THE FINAL DECISION****I. Summary**

By this interim order, San Gabriel Valley Water Company's (San Gabriel) rates that will ultimately be adopted in this proceeding for its Fontana Division shall be effective on January 1, 2004. By taking such action, we are not prejudging the results of this general rate case (GRC), or the changes in authorized rates, if any. However, we do place customers on notice that when new rates are finally adopted, they will be recovered as of the effective date of January 1, 2004.

**II. Procedural Background**

On June 10, 2004, San Gabriel filed its second motion to set interim rates pursuant to Section 455.2 of the Public Utilities Code or, alternatively, to set an effective date for the final decision in this GRC.

By administrative law judge's (ALJ) ruling dated June 15, 2004, pursuant to Rule 45(i) of the Commission's Rules of Practice and Procedure, the ALJ shortened the normally allowed 15 day comment period to eight days. Comments on San Gabriel's motion were filed on June 18, 2004 by City of Fontana (City), Fontana Unified School District (School District) and the Office of Ratepayer Advocates (ORA).

**III. San Gabriel's Motion**

San Gabriel requests that interim rates be set in this proceeding subject to refund pursuant to Section 455.2 or, in the alternative, for an order of the Commission setting the effective date of the final decision in this GRC.

**IV. Response to San Gabriel's Motion**

City, School District, and ORA oppose San Gabriel's request for an interim increase. They argue that an interim rate increase is not in the public interest and San Gabriel's motion is aimed at remedying delays that are in large part attributable to San Gabriel. They believe it is premature to grant any rate increase, interim or otherwise, while the Commission is carefully weighing and considering the serious issues that affect both San Gabriel and the ratepayers.

They also argue that Section 455.2 was not made retroactive by the legislature; and applies only to applications filed after January 1, 2003. San Gabriel's application was filed in July 2002. Therefore, Section 455.2 does not apply.

**V. Background**

San Gabriel's Notice of Intent (NOI) was filed pursuant to the Rate Case Plan for Class A Water Utilities in July 2002. Consistent with the Rate Case Plan, and in accordance with the Rate Case Plan Schedule filed with its NOI, a decision in this proceeding was expected in April 2003. But, for various reasons, the decision was delayed.

Almost a year into the case, on June 26, 2003, San Gabriel filed its initial motion to set interim rates pursuant to Section 455.2 or, alternatively, to set an effective date for the final decision. After the filing of responses by the ORA and other parties and San Gabriel's reply, the Assigned Commissioner issued his ruling on August 5, 2003. Because ORA contended that San Gabriel's rates should be reduced, not increased, the ruling found that "the issue of need for an interim rate increase is in doubt" and the Assigned Commissioner was "not persuaded that it would be in the public interest for San Gabriel to receive an interim rate increase subject to refund." While denying San Gabriel's initial motion, the Assigned Commissioner's Ruling (ACR) continued as follows:

[T]he Assigned Administrative Law Judge and I will strive to have a proposed decision in this matter on the Commission's Agenda for its December 18, 2003 meeting so that San Gabriel may have new rates in place by January 1, 2004, if warranted.

Unfortunately this goal was not met. The intensively litigated evidentiary hearings in this GRC dragged on into October and briefing was not completed until February 5, 2004. The ALJ's proposed decision (PD) was issued on March 18, 2004. The alternate decision of Commissioner Brown was issued on May 13, 2004. A majority of the Commission did not vote in favor of either of these PDs

at its June 9, 2004 meeting. It is possible that a final decision on San Gabriel's rate increase application may be further delayed.

## **VI. Discussion**

This interim decision is necessary in case the Commission does not adopt either the ALJ's PD or the alternate decision of Commissioner Brown.

San Gabriel's application was filed pursuant to the GRC procedure established by the Commission in Decision (D.) 90-08-045. A principal feature of that procedure is a 240-day schedule for processing GRC applications for Class A Water Utilities, such as San Gabriel. Thus, under the Commission's own procedures, the rates for this application should have taken effect on January 1, 2003. It is now nearly two years since San Gabriel filed its NOI in July 2002. While we disagree with San Gabriel's contention that Public Utilities Code Section 455.2 applies to this case we note the intent of this legislation to provide a mechanism (subject to refund) whereby a utility can be made whole if the Commission fails to issue a timely final decision on a GRC application.

At this point in the proceeding, any delay in adopting a decision will result from Commission deliberation, not the actions of San Gabriel. While further delay may be justified in view of the many issues in this complicated proceeding, such delay should not result in the utility being penalized.. At this time, all of Test Year 2003 and half of Test Year 2004 have passed. In D.98-12-078, the Commission found no policy justification for allowing ratepayers to gain from the deferral of rate increases, where such gain would be at the expense of the utility and its shareholders, and where such deferral resulted from delays in the processing of GRCs. It also found the converse to be true – that shareholders should not gain from the deferral of rate decreases, where such gain would be at the expense of ratepayers. (84 CPUC2d 253 (1998).) Also, see Apple Valley

Ranchos Water Company D.02-12-063, and California Water Services Company D.03-04-033, where the Commission found it necessary to set an effective date for the rate increase prior to issuance of the GRC decision. Therefore in congruence with the August 5, 2003 ACR, we conclude that there is good reason to establish the effective date of the final decision in this proceeding and to place customers on notice that when new rates are finally adopted they will be recovered as of January 1, 2004. This date represents a compromise between the requested date (April 1, 2003) and our normal practice of making rates effective on the date of the decision setting GRC rates. The reasonableness of adopting the January 1, 2004 is further supported by the ACR.

By issuing this interim decision, we are not prejudging the results of San Gabriel's GRC or making any change in authorized rates; nor are we shirking our ratemaking responsibilities under the provisions of Section 728. Further, this interim decision does not constitute approval of, or precedent setting in any future proceeding.

#### **VII. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Bertram Patrick is the assigned ALJ in this proceeding.

#### **VIII. Comments on Alternate**

On June \_\_\_\_, 2004, the Alternate Decision of Commissioner Kennedy was filed and served in accordance with Pub. Util. Code Sections 311(d), 311(e), and Rule 77.1 of the Commission's Rules of Practice and Procedure. Comments were filed by \_\_\_\_\_.

**Findings of Fact**

1. San Gabriel filed its GRC application for its Fontana District on November 25, 2002, based on test years 2003 and 2004.
2. At this time, all of San Gabriel's first test year 2003 and half of the second test year 2004 have passed, and it appears that a Commission rate decision in this proceeding may be further delayed.
3. The GRC procedures established by D.90-08-045 under the Rate Case Plan provide for a decision on San Gabriel's GRC application on January 1, 2003.
4. Some of the delays in adopting rates are beyond the control or responsibility of San Gabriel.

**Conclusion of Law**

1. When the Commission issues its decision in this GRC proceeding, the Test Year 2003 and 2004 results of operations and rates should be made effective on January 1, 2004.

**INTERIM ORDER**

**IT IS ORDERED** that:

1. San Gabriel Water Company's (San Gabriel) Test Year 2003 and 2004 results of operations and rates to be adopted in this proceeding shall be effective as of January 1, 2004 for Fontana Division covered in this application. By taking such action we are not prejudging the requested rate increase in San Gabriel's application, or the actual changes in authorized rates, if any.
2. The authority being granted in Ordering Paragraph 1 shall not be used as precedent in any future proceeding.
3. San Gabriel shall provide notice to its customers that any change in rates resulting from this application shall become effective with the effective date of

today's decision. Notice shall be provided via a bill insert and shall be approved by the Commission's Public Advisor's Office prior to mailing. The bill insert notice shall state:

“San Gabriel Water Company currently has pending before the California Public Utilities Commission a request to increase rates in its Fontana Division. By Decision 03-\_\_\_\_\_, the Commission ordered the rates to be adopted by a final decision in that proceeding to become effective on January 1, 2004. By taking such action the Commission is not prejudging the results of San Gabriel Water Company's request for a general rate increase or the changes in authorized rates, if any.”

4. This application remains open.

This order is effective today.

Dated \_\_\_\_\_, 2004 at San Francisco, California.

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the attached Alternate Proposed Decision of Commissioner Kennedy on A.02-11-044 In the Matter of the Application of SAN GABRIEL VALLEY WATER COMPANY (U 337W) for Authority to Increase Rates Charges for Water Service in its Fontana Water Company Division to Increase Revenues by \$11,573,200 or 39.1% in 2003, \$3,078,400 or 7.3% in 2004, \$3,078,400 or 6.8% in 2005, and \$3,079,900 or 6.4% in 2006, on all parties of record in this proceeding or their attorneys of record.

Dated June 24, 2004, at San Francisco, California.

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Halina Marcinkowski

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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